

APPEAL NO. 031631
FILED JULY 30, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 3, 2002, a contested case hearing (CCH) was held. In Texas Workers' Compensation Commission Appeal No. 030330-s, decided April 2, 2003, the Appeals Panel reversed the hearing officer's decision that the appellant (claimant) is entitled to supplemental income benefits (SIBs) for the seventh quarter; that the claimant is entitled to lifetime income benefits (LIBs); and that the Subsequent Injury Fund (SIF) is liable for LIBs, and remanded the case to the hearing officer to admit Dr. R report into evidence and to consider that report on the issues of SIBs and LIBs entitlement. A CCH on remand was held on May 15, 2003. In the decision on remand, the hearing officer decided that the claimant is not entitled to SIBs for the seventh quarter, that the claimant is entitled to LIBs, and that the SIF is liable for LIBs pursuant to Section 408.162. The claimant appeals the hearing officer's determination that he is not entitled to SIBs for the seventh quarter, contending that that determination is not supported by the evidence and is against the great weight and preponderance of the evidence, and reurging his objection to the admission of Dr. R's report. Respondent 1 (carrier) responds, requesting affirmance of the hearing officer's determination that the claimant is not entitled to SIBs for the seventh quarter. No response was received from Respondent 2 (SIF). There is no appeal of the hearing officer's determinations in his decision on remand that the claimant is entitled to LIBs and that the SIF is liable for LIBs pursuant to Section 408.162, and thus those determinations have become final under Section 410.169.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The SIBs criterion in issue is whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying period for the seventh quarter. The claimant claimed he had no ability to work during the qualifying period for the seventh quarter as a result of his compensable injury. The hearing officer determined that the claimant did not meet the requirements of Rule 130.102(d)(4) because a record showed that the claimant had some ability to work. The hearing officer found that the claimant had some limited ability to work during the qualifying period for the seventh quarter and that the claimant did not make a good faith effort to find employment commensurate with his ability to work during the qualifying period for the seventh quarter.

The claimant contends that the hearing officer's decision is not supported by the evidence and is against the great weight and preponderance of the evidence. Although there is conflicting evidence in this case, we conclude that the hearing officer's decision

that the claimant is not entitled to SIBs for the seventh quarter is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. We note that there is no indication in the hearing officer's decision that he gave presumptive weight to Dr. R's report, and that the hearing officer's decision reflects that he considered Dr. R's report as another medical report. In addition to Dr. R's report, there is a functional capacity evaluation report in evidence that supports the hearing officer's decision. We decline to reconsider our decision in Appeal No. 030330-s, *supra* regarding the admissibility of Dr. R's report.

The hearing officer's decision and order on remand are affirmed.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Robert W. Potts
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Michael B. McShane
Appeals Panel
Manager/Judge